

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

<p>SIMO HOLDINGS INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">-against-</p> <p>HONG KONG U-CLOUDLINK NETWORK TECHNOLOGY LIMITED and U-CLOUDLINK (AMERICA), LTD.,</p> <p style="text-align: center;">Defendants.</p>

<p>U.S.D.C. SDNY</p> <p>DOCUMENT</p> <p>ELECTRONICALLY FILED</p> <p>DOC #:</p> <p>DATE FILED: 9/25/19</p>

18-cv-5427 (JSR)

MEMORANDUM ORDER

JED S. RAKOFF, U.S.D.J.

On August 29, 2019, the Court issued an opinion granting Plaintiff SIMO Holdings Inc.'s ("SIMO") post-trial motion to supplement the judgment to include sales of Daypasses sold internationally for use with devices purchased in the United States. Op. and Order 42-45, ECF No. 264. Pursuant to this order, the Court ordered defendants Hong Kong uCloudlink Network Technology Limited and uCloudlink (America), LTD., (together "uCloudlink") to produce to SIMO, inter alia, sales data for Daypasses sold abroad for use with devices sold in the United States between August 13, 2018 and August 31, 2019. Id. At 51-52. Should uCloudlink maintain it was unable to produce this data, the Court asked the parties to brief the Court on next steps for estimating international damages in the absence of direct data. Id. At 52 n.20.

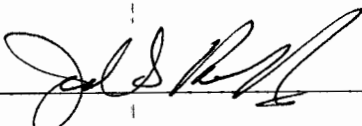
Such briefing has now occurred. In its brief, uCloudlink maintains that it does not track and is unable to produce international data usage for devices sold in the United States. Defs. Responsive Br. Regarding Damages 5, ECF. 268. It further argues that any post-verdict method of calculating foreign damages absent this data would violate its Seventh Amendment rights. In response, SIMO argues that uCloudlink had every opportunity to track international data usage, but either is misrepresenting its inability to do so, or is willfully refusing to make any effort to do so. Pl. Opposition to Defs. Br. Regarding Foreign Sales 4, ECF. 269. Additionally, SIMO offers the Court three options by which it may estimate international data usage on U.S. devices. SIMO Holdings Inc. Br. 6, ECF 266.

Given uCloudlink's history of obstructionist production tactics in this litigation, see Op. and Order 41, ECF No. 264, the Court finds that uCloudlink may not avoid paying damages on foreign data usage by the device of failing to provide data on foreign sales or failing to offer an alternative method of calculating such damages. Accordingly, the Court orders that parties shall, in their proposed Amended Judgment, account for foreign damages according to SIMO's first proposed method. SIMO Holdings Inc. Br. 6, ECF 266. The parties shall first determine an average foreign data usage per device ("AFDU"), by taking the total data used

outside the United States during the infringing period¹ and dividing it by the total number of devices sold and rented. The parties shall then multiply that AFDU by the number of devices sold and rented in the United States to get an estimate of the foreign data use associated with the U.S.-based infringing activity. The parties shall then factor this number by the jury-determined reasonable royalty rate of \$2.96/500MB. This must all be done, and the proposed Amended Judgment presented to the Court, by no later than October 7, 2019.

SO ORDERED.

Dated: New York, NY
September 24, 2019



JED S. RAKOFF, U.S.D.J.

¹ Although its briefing is unclear, the Court assumes that SIMO intended the average data usage per device to be calculated based only on Daypass usage outside of the United States. To include all data in this average would likely result in double-counting infringement that occurred inside of the United States.